



## CALIFORNIA HIGH-SPEED RAIL AUTHORITY

### MEMORANDUM

**To:** Chairperson and Authority Members      **Date:** May 6, 2009

**From:** Mehdi Morshed, Executive Director

**Subject:** Agenda Item 9 -- Recommended Positions on High Speed Train Legislation

#### **Discussion:**

At the March 5, 2009 monthly Board meeting, staff presented an information item summarizing new high-speed train legislation introduced in the 2009-10 Legislative Session. The report included two mostly technical measures developed on behalf of the Authority with the advice of counsel from the Attorney General's office. A total of eight new bills were identified as affecting or having the potential to affect in different ways the high-speed train project or related intercity passenger rail operations. As the new bills are scheduled for legislative policy and fiscal hearings and move through the legislative process, it can be anticipated that the Authority will be asked for its views, if any, on the various measures. The Board may wish to discuss the provisions of the several bills and determine whether to take formal positions on any or all of the measures. A updated and revised summary of pending legislation covering 10 bills is presented in this report.

#### **Recommendation:**

Authority staff propose that the Authority consider and take action regarding positions on specific high-speed train legislation as follows, and direct the Executive Director to communicate any Board positions to the respective authors of the bills:

1. **AB 153 (Ma)** – *Operations and duties of the High Speed Rail Authority - Successor legislation to the Authority-sponsored AB 981 (Ma) in 2007* (later used for other issues). The bill deletes language made obsolete by the passage of AB 3034 (Prop. 1A) last year regarding a financial plan and makes several technical and clarifying changes to statutes governing the powers duties of the Authority (for example, makes a technical reference that the Board is the "governing authority" of the Authority in cases of eminent domain, clarifies that the Authority's existing eminent domain powers exempt the Authority from having to rely on the state Public Works Board to acquire property, and deletes obsolete contingency language and updates provisions requiring the Authority to prepare construction plans for the HST system). The bill also provides that the Authority may hire its own legal counsel (and continue to use the services of the Attorney General, or both), similar to provisions for the California Transportation Commission.

Bill status: Approved by Assembly Transportation Committee on 3/23/09, 9-0; approved by Assembly Judiciary Committee 7-2 on 4/14/09; approved by Assembly Appropriations Committee 11-5 on 4/29/09. Sent to Assembly Floor.

Recommendation: Support as sponsor.

2. **AB 289 (Galgiani)** – *CEQA Exemption for Grade Separation projects. Clarifies that a railroad grade separation project that is a component of the high-speed train system is included in the existing exemption from the California Environmental Quality Act (CEQA) if the project eliminates an existing railroad grade separation or reconstructs an existing grade separation.* Current law provides an exemption from CEQA for grade separation projects that eliminate an existing grade separation or reconstruct a grade separation. There may be some ambiguity, however, whether such grade separation projects undertaken by the Authority and initially used by complementary rail passenger services (e.g., Caltrain, Metrolink, etc.) are covered by the exemption. The bill clarifies that the Authority's projects to eliminate an existing grade separation or reconstruct a grade separation qualify for the exemption by specifically referencing those projects in the existing exemption language.

Bill status: Approved by Assembly Transportation Committee 13-0 on 4/27/09; referred to the Assembly Floor.

Recommendation: Support

3. **AB 733 (Galgiani)** – *Job creation as a contract award factor. Authorizes the Authority to consider the creation of jobs in California when awarding major contracts or purchasing high speed trains.* The Authority's current powers and duties include, among other things, contractual authority, rights-of-way acquisition, eminent domain, debt issuance, setting fares and schedules, etc. The bill would add that the Authority, to the extent permitted by federal and state law, may consider the creation of jobs in California when awarding major contracts or purchasing high-speed trains and related equipment and supplies. The bill is permissive; it allows but does not require the Authority to utilize California job creation as a contractual criterion.

Bill status: Approved by the Assembly Transportation Committee 13-0 on 4/20/09; approved by Assembly Appropriations Committee 16-0 on 4/29/09. Sent to Assembly Floor.

Recommendation: Support

4. **AB 1375 (Galgiani)** – *Department of High Speed Trains. Creates a Department of High-Speed Trains within the Business, Transportation and Housing Agency to implement the policies of the High-Speed Rail Authority and perform the daily tasks of building the high-speed train project and implementing the HST system.* The Authority would continue as the policy and oversight body of the HST project and exercise those powers and duties described in Proposition 1A. The bill would transfer certain of the

existing powers and responsibilities of the Authority to the department and add new duties, including the annual submission of a 6-year high-speed train capital improvement program and a separate progress report to the Legislature. The Authority would appoint the department director and the Governor could appoint up to 10 exempt executive employees to staff the department, who would serve at the pleasure of the director. The bill would extend the Authority's/departments' rights-of-way and property acquisition and management authority to parallel that exercised by Caltrans and would authorize the employment of in-house legal counsel.

Bill status: Approved by Assembly Transportation Committee 9-4 on 4/27/09; referred to Assembly Appropriations Committee.

Recommendation: Monitor

5. **AB 928 (Blakeslee)** – *Earthquake early warning system.* Requires the Authority to develop an earthquake early warning system, in cooperation with several state agencies. The bill requires the warning system to be designed to protect the lives of high-speed train passengers and schoolchildren and protect critical infrastructure by providing advanced earthquake warning and by enabling preventative measures before an earthquake.

Bill status: Referred to Assembly Rules Committee, awaiting action. (Likely a 2-year bill.)

Recommendation: Monitor

6. **SB 409 (Ducheny)** – *Creates a Department of Railroads in the Business, Transportation and Housing Agency, responsible for several current state rail programs.* The current version of the bill would combine in one agency Caltrans' intercity rail (AMTRAK) program, the Public Utilities Commission's and Caltrans' goods movement (freight) rail programs, and the high-speed train (HST) program/project. The new department would also include the state's railroad grade separation programs and be responsible for the coordination of regional planning efforts for rail transportation. The department would be the only agency eligible to apply for and receive grant and loan funds from the federal government or other sources for intercity rail, high-speed rail, or freight rail purposes. The High Speed Rail Authority would become a division of the new Department of Railroads, and the Authority's executive director would report to the director of Railroads. The author has stated that she will revise or rewrite the bill following the submittal to the Legislature of the railroad agency operations and organization study being conducted by the California Research Bureau as required by SB 53 (Ducheny, 2008). The report was due on May 1, 2009 but is still pending at this time. (See end comments.)

Bill status: Heard in Senate Transportation and Housing Committee as an information item on 4/14/09. To be revised and rule waivers to be sought to waive legislative bill deadlines to permit further legislative action and consideration.

Recommendation: Monitor

7. **SB 455 (Lowenthal)** – *Operations and duties of the High Speed Rail Authority. Makes numerous conforming changes to statutory provisions and adds specific references to the Authority in statutes governing property acquisition activities and eminent domain. Adds additional Phase 1 project selection criteria and requires Senate confirmation of some Board appointees. Requires the Authority to prepare an overall project schedule on a quarterly basis, approve a quarterly contract status report, and approve all contract amendments at board meetings.* The bill proposes many technical and conforming changes to the Authority's property acquisition powers and incorporates several changes to law regarding property management as suggested by the Authority's legal counsel. The bill clarifies that the Authority has independent authority parallel to that of Caltrans in these property acquisition, management and disposition activities and is not under the general property management scheme administered by the Department of General Services for other agencies. The bill also makes several author-initiated substantive changes to the Authority and its operations: a) the Governor's 5 appointees to the Authority would be subject to Senate confirmation (prospectively); b) the Authority would have to consider additional project selection criteria for investments in Phase 1 of the HST project—including access to railroad stations and terminals, improvements to travel times, service reliability, safety, improved connections between the San Joaquin Valley and southern California and the Bay Area, etc., or some combination of them; c) the Authority would have to prepare an overall project schedule with delivery milestones and related information and present the report quarterly to the board and the Legislature; d) the board would have to approve quarterly a written report on the status of contracts for the previous quarter, and submit the reports to the Legislature; and e) the board would have to formally approve all proposed amendments to contracts, accompanied by a written report explaining the changes.

Bill status: Approved by the Senate Transportation and Housing Committee 10-1 on 4/22/09; referred to Senate Appropriations Committee and awaiting hearing.

Recommendation: Monitor

8. **SB 526 (Ashburn)** – *San Joaquin rail corridor: Altamont Pass extension.* Requires Caltrans to enter into negotiations with operating freight and commuter passenger railroads to develop a service plan and operating agreement to extend San Joaquin Corridor intercity passenger train service (state-supported AMTRAK) to and from San Francisco using the Altamont Corridor.

Bill status: Approved by Senate Transportation and Housing 10-0 on 4/29/09; referred to Senate Appropriations Committee; set for hearing on 5/11/09.

Recommendation: Monitor

9. **SB 527 (Ashburn)** – *Spot bill (placeholder). States the Legislature’s intent to reorganize the High-Speed Rail Authority to ensure greater oversight and accountability for the HST project.*

Bill status: Assigned to Senate Transportation and Housing Committee. First hearing date canceled; awaiting further action.

Recommendation: Monitor

10. **SB 783 (Ashburn)** - *High-speed rail business plan. Requires the Authority to adopt and submit a new business plan by March 1, 2010 and every two years thereafter.* The bill requires the preparation, publication, adoption and submittal to the Legislature of a new business plan every two years, beginning March 1, 2010. A draft of each plan must be published 60 days prior for public review and comment, including a public hearing. The biennial plans must include specific elements, including patronage and service level forecasts, alternative financial *pro formas*, project work schedules, funding sources, development strategies and other elements.

Bill status: Approved by Senate Transportation and Housing Committee 10-0 on 4/29/09; referred to Senate Appropriations Committee.

Recommendation: Monitor

**Related Prior Legislation:**

**SB 53 (Ducheny)** – *Department of Railroads. Enacted in 2008, requires the California Research Bureau (CRB), by May 1, 2009, to analyze and report to the Legislature the Bureau’s recommendations and the estimated costs for improving the state’s rail functions.* The bill requires the CRB, in consultation with the Business Transportation and Housing Agency, Caltrans, the California Transportation Commission, the High Speed Rail Authority, the Public Utilities Commission and the Legislative Analyst, to study and make recommendations for improving oversight, regulation, and efficiency of those agencies necessary to improve passenger and freight rail mobility in California. The report must also consider the consolidation of those duties and responsibilities into one or more state agencies, boards or commissions.

Report status: Late; not submitted by May 1, 2009 deadline. Draft of report may be submitted to Legislature shortly, with projected report delivery date of May 15, 2009.